

common heritage/*res communis* doctrine prior to and during the Conference, the US argument for the application of an alternate regime for the deep seabed is extremely weak.

Morell has produced a very well written and researched book which is extensively referenced and footnoted. At times this is a distraction, not only because these notes are at the rear, but also because on occasion very substantive argument which has not been made in the text is to be found in the accompanying footnotes. By relying on this practice the author at times inadequately pursues his line of argument so that the reader is left pondering a series of complex international law questions. The criticism then is that while the book is evenly divided between details on US policy at the Conference and a review of that policy and the legal status of the deep seabed, the second half of the book deals with so many complex questions of not only the deep seabed regime but also of fundamental questions of international law that justice is not done to the subject matter in what amounts to only 110 pages of text. The short review of the current US attitude to the whole UNCLOS Convention is an example. Despite rejecting Part XI of UNCLOS the US has continued to assert that it is able to enjoy the benefits of other provisions of the Convention. However, the analysis as to whether the US can select and reject major provisions of UNCLOS, and the consequence this has for other states which have ratified the Convention, falls short of comprehensively dealing with the complicated questions of treaty and customary international law that this approach raises.

Overall, though the question of balance is a minor criticism in what amounts to a most valuable contribution to the law of the sea literature on the question of the current status of the deep seabed regime and whether the US can continue to reject UNCLOS in the face of increasing international acceptance. With the conclusion of the Reagan-Bush era in the White House, it now remains to be seen whether the administration of President Clinton will bring about a substantial change in US policy towards UNCLOS and the deep seabed regime.

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**RESPONSIVE REGULATION: TRANSCENDING THE
DEREGULATION DEBATE** by Ian Ayres and John
Braithwaite, Oxford, Oxford University Press, 1992,
205pp, ISBN 0 19 507070 4.

Ayres and Braithwaite is a challenging book. Despite a title redolent of European theories of law, it avoids an excess of high theory: instead it joins the search for an escape from the ideologically grid locked debate between advocates of the free market and that of "command economy" state regulation. They argue that there is a middle way — indeed that there is a

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surfeit of such alternatives. "Responsive Regulation" argues the case for this abundance of riches and outlines some of the conditions under which various alternatives might best serve the competing interests of the community in providing "market governance". This is a book about legal frameworks for production; debates about frameworks of (welfare) distribution are left to others.

The book eschews normative prescriptions about what is best, claiming that the best strategy will depend on "context, regulatory culture and history" (p 5). Not for these authors the grand theories of European (and other) commentators who articulate responsive law as a pinnacle in the evolution of law; they prefer to ground their ideas in what harmonises best with the interests of industry, consumer groups and the public interest. To this end, the term responsive regulation is given a pragmatic content: it captures the fact that the form of involvement is shaped by the form of the industry, as well as the notion that the form of the response adjusts to the behaviour of industry.

The book raises a number of provocative ideas in addition to Braithwaite's earlier notion of "integrative shaming" (that stigma can be used constructively for normative purposes within more congenial settings such as families and local communities). In this work the authors argue that regulatory goals are best advanced when the state has a choice between means of intervention which commence with the "big stick" (that way the lesser sanctions — including cooperative self-regulation — can be relied on for most of the time: Chapter 2). It is further argued that cosy arrangements (corruption) can be avoided other than by rotation of regulators (by sharing regulatory functions three ways between the state, "private (consumer) interest groups", and the objects of regulation: Chapter 3), and that programs can be both tailor made and be proposed by corporations for subsequent blessing and enforcement by the state (Chapter 4).

The net effect is to endorse diversity on a grand scale (equivalent bodies may be dealt with quite differently: so called "partial industry regulation": Chapter 5) and to provide for dynamic rather than static interventions: the regulatory framework "adjusts" to the degree of compliance and fidelity of the body being regulated (responses move up or down a "pyramid" of possible regulatory strategies running from traditional "command" styles through to self-regulation: p 39). Radical ideas such as these raise many questions. Some of these are deflected by the exploratory character of the arguments advanced: the tone is tentative and thoughtful rather than prescriptive or iconoclastic. Others will inevitably be distorted. The authors can anticipate that the neo-conservative liberals (and law and economics adherents) will attack the book for daring to suggest that there is a role for the state in regulating some of the areas selected for discussion (including the environment, nursing homes and industry). Dicey is an icon for some; and, despite valiant endeavours to apply economic modelling assumptions (esp pp 61-73), I fear that it will convince neither devotees nor sceptics (not least because the presentation causes the mind to hibernate after a page or so — even if the author's advice is taken to skip past the finer detail: p 60).

Less easily deflected is the objection that the scheme is impractical, or that it offends deeper values: in particular that stand-by "the rule of law" (p 53). The latter is itself easier to state than to apply. The author's take advantage of this to interleave many "examples" which purport to show that the new scheme is already operational (with self-generated standards in US coal

mining: pp 116-117), or that it is marginally fairer (or more in the public interest) than so called orthodox frameworks of legal regulation (uniform regulatory standards plus inspectorate). Some of these appear to be plausible, while others are more contrived. For example the constant reference to the fieldwork observations about the nursing home administration in Australia unearth both plausible explanations of the advantages of internal regulation, as well as more disturbing feeling that the participant observation is causing the administrators to "finesse" their comments, giving an appearance of greater responsibility than might be borne out in practice: pp 27-32, 155-156.

This exposes the thesis for what it is: a cerebral model of what might be, and a radical one at that. But it is only radical for daring to suggest that there might be an optimal middle ground between orthodoxies of the market and state regulation. The premises adopted by the authors *are* at odds with the architectural styles of the past: messy diversity replaces the simplicity of the "efficiency principle" of market economists, or the "uniform standards" of classical regulatory models. Despite their best endeavours (using economic modelling and participant observation methodologies), the authors do little to raise those assumptions above the level of cogent hypotheses. This is no mean feat, however: neither the orthodox market nor the standard regulatory model has yet been empirically "proven" to be valid, though much ink has been spilt (and many research dollars expended) in the search for that validity.

Responsive Regulation, then, should be read for its contribution to the history of ideas about the regulatory enterprise. In this it will not disappoint; offsetting the belaboured passages of econometric modelling, occasional lapses into jargon, and some strained illustrations.

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